UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 30 2007

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Glen Halter, Plant Manager
Durand Glass Manufacturing Company, Inc.
901 South Wade Boulevard, Box 5012
Millville, New Jersey 08332

RE: Notice of Violation - Reference Number CAA-02-2007-1309

Dear Mr. Halter:

The United States Environmental Protection Agency (EPA) issues the enclosed Notice of Violation (NOV) to the above listed addressee. EPA has determined that the Durand Glass manufacturing facility, located in Millville, New Jersey, is being operated in violation of the "Prevention of Significant Deterioration of Air Quality" regulations, 40 C.F.R. § 52.21, and "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rule)," Title 7, Chapter 27, Subchapter 18 of the New Jersey Administrative Code, as approved into New Jersey's State Implementation Plan.

As indicated in the NOV, if you wish to request a conference with EPA to discuss the alleged violations, you must do so within ten (10) days of your receipt of the NOV. All conferences will be held within thirty (30) days of your receipt of the NOV.

EPA reserves its enforcement authority under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a), to issue an administrative compliance order, an administrative penalty order, or to bring a judicial civil action.

If you have any questions, or would like to schedule the conference provided for in the NOV, please contact Erick Ihlenburg, Assistant Regional Counsel, at (212) 637-3250.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosure

cc: Edward Choromanski, NJDEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF: Durand Glass Manufacturing Company, Inc. Millville, New Jersey RESPONDENT	**Notice of Violation** CAA-02-2007-1309

I. STATUTORY AUTHORITY

The United States Environmental Protection Agency (EPA) Region 2 Division Director of the Division of Enforcement and Compliance Assistance (Director) issues this **Notice of Violation (NOV)**, pursuant to 42 U.S.C. 7401 *et seq.*, the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(1), Section 113(a)(1), to **Durand Glass Manufacturing Company, Inc.** (Respondent) located at 901 S. Wade Boulevard, Millville, New Jersey. The authority to find a violation and issue this NOV is delegated to the Director from the Administrator through the Regional Administrator. Section 113(a)(1) of the Act requires that the EPA notify both the person in violation and the State in which the violation occurred whenever the EPA concludes a person violated a requirement of an applicable implementation plan.

Pursuant to Sections 110 and 161 of the Act, each applicable implementation plan must contain emission limitations and such other measures as may be necessary,

as determined under regulations promulgated under Part C of title I of the Act, to prevent significant deterioration of air quality in each region (or portion thereof) designated as "attainment" or "unclassifiable" pursuant to Section 107 of the Act. Under the authority of Sections 110, 161, 165 and 166 of the Act, EPA promulgated the "Prevention of significant deterioration of air quality" regulations (PSD regulations), 40 C.F.R. § 52.21. The PSD regulations established preconstruction permitting requirements for new major stationary sources and major modifications located in areas designated as in attainment with the national ambient air quality standards (NAAQS) promulgated under Section 109 of the Act.

Pursuant to Section 172 of the Act, the State of New Jersey submitted to EPA, for approval into its state implementation plan (SIP), the "Control and Prohibition of Air Pollution From New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rule)," Title 7, Chapter 27, Subchapter 18 of the New Jersey Administrative Code (Subchapter 18), which established preconstruction permitting requirements for certain subject facilities and modifications, located in areas designated as in "nonattainment" with the NAAQS. Consistent with Sections 172 and 173 of the Act, Subchapter 18 is intended to reduce emissions of air pollutants in nonattainment areas, so that such areas make reasonable further progress towards meeting the NAAQS.

II. STATUTORY AND REGULATORY BACKGROUND

PSD Requirements

All citations in this NOV to 40 C.F.R. § 52.21 refer to the PSD regulations that were in effect in 1998, the year the alleged violations began to occur.

1. Section 165(a) of the Act provides, among other things, that no major emitting facility on which construction is commenced after August 7, 1977, may be constructed or modified in any area that is in attainment with the NAAQS, unless:

a) a preconstruction PSD permit has been issued for the facility;

b) the proposed permit has been subject to a review in accordance with CAA Section 165, the required analysis has been conducted in accordance with the PSD regulations, and a public hearing has been held, with opportunity for interested persons to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations:

c) the owner/operator of such facility demonstrates, as required pursuant to Section 110(j) of the Act, that emissions from construction or operation of such facility will not cause or contribute to air pollution in excess of any

   i) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which the PSD regulations apply, more than one time per year;

   ii) NAAQS in any air quality control region; or

   iii) any other applicable emission standard or standard of performance under this chapter;

d) the proposed facility is subject to the best available control technology (BACT) for each pollutant subject to regulation under the Act, emitted from, or which results from such facility;

e) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility; and

f) the owner/operator of a major emitting facility for which a permit is required under the PSD regulations agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source.

2. 40 C.F.R. § 52.21(a) provides that the PSD regulations apply to any SIP which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any state that is in attainment with the applicable NAAQS.

3. Pursuant to Section 110 and 161 of the Act, EPA 1) disapproved New Jersey's prevention of significant deterioration of air quality rules, and 2) incorporated by reference, and made part of the applicable New Jersey implementation plan, the provisions at 40 C.F.R. §§ 52.21(b) through (w). 40 C.F.R. § 52.1603, 43 Fed. Reg. 26410 (June 19, 1978).

4. 40 C.F.R. § 52.21(i)(1) provides that no stationary source or modification to which the requirements of 40 C.F.R. §§ 52.21(j) through (r) apply may begin construction without a permit which states that the stationary source or modification will meet those requirements.

5. 40 C.F.R. § 52.21(i)(2) and (3) provide that the requirements of 40 C.F.R. §§ 52.21(j) through (r) are applicable to any major stationary source and any major modification that would be constructed in an area designated under the Act as in attainment with the NAAQS, with respect to each pollutant subject to regulation under the Act. [1]

6. 40 C.F.R. § 52.21(b)(5) defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

[1] In general, the PSD Regulations apply only to those pollutants listed under 40 C.F.R. § 52.21(b)(23)

7. 40 C.F.R. § 52.21(b)(1)(i) defines "major stationary source" as, among other things, any stationary source which emits, or has the potential to emit, 250 tons per year (tpy) or more of any air pollutant subject to regulation under the Act.

8. 40 C.F.R. § 52.21(b)(4) defines "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

9. 40 C.F.R. § 52.21(b)(2)(i) defines "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

10. 40 C.F.R. § 52.21(b)(23)(i) defines "significant," in reference to a net emissions increase of, or the potential of a source to emit, nitrogen oxides (NO_x),[2] as a rate of emissions that would equal or exceed 40 tons per year (tpy).

11. 40 C.F.R. § 52.21(b)(3) defines "net emissions increase" as the amount by which the sum of the following exceeds zero:

    a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

    b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

[2] For purposes of this NOV, "NO_x" includes nitrogen dioxide (NO_2)

12. 40 C.F.R. § 52.21(b)(3)(ii) provides that an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

a) the date five years before construction on the particular change commences; and

b) the date that the increase from the particular change occurs.

13. 40 C.F.R. § 52.21(b)(3)(iii) provides that an increase or decrease in actual emissions is creditable only if the EPA has not relied on it in issuing a permit for the source under the PSD regulations, which permit is in effect when the increase in actual emissions from the particular change occurs.

14. 40 C.F.R. § 52.21(b)(3)(v) provides that an increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

15. 40 C.F.R. § 52.21(b)(3)(vi) provides that a decrease in actual emissions is creditable only to the extent that:

a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

b) it is federally enforceable at and after the time that actual construction on the particular change begins; and

c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

16. 40 C.F.R. § 52.21(b)(21)(i) defines "actual emissions" as the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance

with 40 C.F.R. § 52.21(b)(21)(ii) through (iv).

17. 40 C.F.R. § 52.21(b)(21)(iv) provides that for any emissions unit (other than an electric utility steam generating unit as specified in 40 C.F.R. § 52.21(b)(21)(v)), which has not begun normal operations on the particular date, actual emissions equal the potential to emit of the unit on that date.

18. 40 C.F.R. § 52.21(b)(21)(ii) provides that, in general, actual emissions as of a particular date must be equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Administrator must allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions must be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

19. 40 C.F.R. § 52.21(b)(21)(iii) provides that EPA may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

20. 40 C.F.R. § 52.21(b)(21)(iv) provides that for any emissions unit, other than an electric utility steam generator, which has not begun normal operations on the particular date, actual emissions are equal to the potential to emit of the unit on that date.

21. 40 C.F.R. § 52.21(b)(16) defines "allowable emissions" as the emissions rate of a stationary source calculated using the maximum rated capacity of the source,

unless the source is subject to federally enforceable limits which restrict the operating rate, hours of operation, or both, and the most stringent of the following:

a) the applicable standards in 40 C.F.R. Parts 60 and 61;

b) the applicable SIP emissions limitation, including those with a future compliance date; or

c) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

22. 40 C.F.R. § 52.21(j)(2) provides for control technology review, in which a new major stationary source located in an attainment area must apply best available control technology (BACT) for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

23. 40 C.F.R. § 52.21(j)(3) provides that where there is a major modification, an owner/operator of the major stationary source must install and operate BACT for each pollutant subject to regulation under the Act for which there is a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which the net emissions increase in the pollutant would occur as a result of the physical change or change in the method of operation in the unit.

24. 40 C.F.R. § 52.21(b)(12) defines "BACT" as an emissions limitation based on the maximum degree of reduction for each pollutant subject to regulation under the Act, which would be emitted from any proposed major stationary source or major modification, which EPA determines, on a case-by-case basis, is achievable for

such source or modification through application of production processes or available methods, systems, and techniques, taking into account energy, environmental, and economic impacts and other costs.

25. 40 C.F.R. § 52.21(k) provides that the owner/operator of a proposed source or modification must perform a source impact analysis and demonstrate that allowable emission increases from the proposed source or modification would not cause or contribute to a violation of any NAAQS in any air quality control region, and that the increase will not cause or contribute to any applicable maximum allowable increase over the baseline ambient air concentration in any area.

26. 40 C.F.R. § 52.21(m) provides that the owner/operator of a proposed major stationary source or major modification must conduct and submit, as part of a PSD permit application, an ambient air quality analysis for each pollutant that the source would have the potential to emit in a significant amount, and/or each pollutant for which the modification would result in a significant net emissions increase.

27. 40 C.F.R. § 52.21(n) provides that the owner/operator of the proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under the PSD regulations.

28. 40 C.F.R. § 52.21(o) provides that the owner/operator of a proposed major stationary source or major modification shall provide an analysis of the

impairment to visibility, soils, and vegetation that would occur as a result of the source or modification, and the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

29. 40 C.F.R. § 52.21(r)(1) provides that any owner/operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to the PSD regulations or with the terms of any approval to construct, or any owner/operator of a source or modification subject to the PSD regulations who commences construction after the effective date of the PSD regulations without applying for and receiving approval thereunder, is subject to appropriate enforcement action.

30. 40 C.F.R. § 52.21(r)(3) provides that approval to construct must not relieve any owner/operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

Nonattainment New Source Review Requirements

31. Pursuant to Section 172(b) of the Act, at the time EPA promulgates the designation of an area as nonattainment with respect to a NAAQS, EPA must establish a schedule (extending no later than 3 years from the date of the nonattainment designation), according to which the State containing such area must submit a plan or plan revision meeting the applicable requirements of

Sections 172(c) and 110(a)(2) of the Act.

32. Pursuant to Section 172(c) of the Act, the plan provisions required to be submitted under title I, Part D of the Act must comply with each of the following, among other things:

a) such plan provisions must provide for the implementation of all reasonably available control measures, including such reductions in emissions from exisiting sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology, and must provide for attainment of the primary NAAQS;

b) such plan provisions must require reasonable further progress, as defined in Section 171 of the Act; and

c) such plan provisions must require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with Section 173 of the Act.

33. Section 173(a) of the Act provides that permits to construct and operate new or modified major stationary sources may be issued if, among other things:

a) by the time the source commences operation, sufficient offsetting emission reductions have been obtained (in accordance with Section 173(c) of the Act), such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source, will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify, so as to represent reasonable further progress;

b) the proposed source is required to comply with the lowest achievable emission rate (LAER), as defined in Section 171 of the Act:

c) the owner/operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person in such state are subject to emission limitations, and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards in effect under the Act: and

d) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

34. Sections 181 through 185B of the Act (title I, Part D, Subpart 2), mandate specific additional requirements with respect to major sources of VOC and NO_x that are located in areas designated as nonattainment for ozone.

35. Pursuant to Section 181(a)(1) of the Act, each area designated as nonattainment for ozone under CAA Section 107 is classified at the time of such designation, by operation of law, under table 1, as a Marginal, Moderate, Serious, Severe or Extreme Area.

36. Pursuant to Section 182 of the Act, each state in which all or part of a classified ozone nonattainment area is located must submit implementation plan revisions to EPA, as described under the applicable subsections of CAA Section 182.

37. Pursuant to Section 182(a)(2)(C) of the Act, within 2 years after November 15, 1990, states must submit a plan revision that includes, among other things, provisions to require permits, in accordance with CAA Sections 172(c)(5) and 173, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the nonattainment area.

38. Pursuant to Section 182(d) of the Act, each state in which all or part of a Severe Area is located must, with respect to the Severe Area, make the submissions described under Section 182(c) of the Act, in addition the revisions to the applicable implementation plan described under Section 182(d). For any Severe

Area, the terms "major source" and "major stationary source" include any stationary source that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds (VOC).

39. Pursuant to Section 182(c) of the Act, each state required to make the submissions described in Section 182(c), must also make the submissions described in Section 182(b) of the Act, relating to Moderate Areas.

40. Pursuant to Section 182(b)(2) of the Act, the state must submit a revision to the applicable implementation plan, to include provisions requiring the implementation of reasonably available control technology (RACT) under CAA Section 172(c)(1), with respect to, among other things, all major stationary sources of VOCs that are located in the area.

41. Pursuant to Section 182(f) of the Act, the plan provisions required under title I, Part D, Subpart 2, for major stationary sources of VOCs, must also apply to major stationary sources of NO_x.

42. The New Jersey SIP revisions which implement RACT requirements with respect to emissions of NO_x are found at Title 7, Chapter 27, Subchapter 19 of the New Jersey Administrative Code (N.J.A.C.).

43. Pursuant to Section 184 of the Act, a single ozone transport region (OTR), which includes the state of New Jersey, was established by operation of law.

44. On March 11, 1980, EPA conditionally approved New Jersey's nonattainment NSR implementation plan, N.J.A.C. 7:27-18.1 et seq. (Subchapter 18). 45 Fed. Reg. 15531.

On August 5, 1980, New Jersey submitted a revision of Subchapter 18 to EPA, for approval into the SIP. See 46 Fed. Reg. 21994 (April 15, 1981).

46. On April 15, 1981, EPA gave full approval of Subchapter 18. 46 Fed. Reg. 21994.

47. On February 19, 1993, New Jersey adopted amendments to Subchapter 18, and on the same date submitted the amendments to EPA for approval into the SIP. See 59 Fed. Reg. 56019 (Nov. 10, 1994).

48. On November 10, 1994, EPA proposed a limited approval and a limited disapproval of the February 19, 1993 amendments to Subchapter 18. 59 Fed. Reg. 56019.

49. Among the portions of Subchapter 18 for which EPA proposed limited disapproval was the methodology for calculating net emissions increases, found at N.J.A.C. 7:27-18.7.

50. On July 25, 1996, EPA finalized its limited approval of the February 19, 1993 amendments to Subchapter 18. 61 Fed. Reg. 38591.

51. Upon EPA approval, SIP requirements are federally enforceable under Section 113 of the Act. 40 C.F.R. § 52.23.

52. EPA's July 25, 1996 limited approval of the Subchapter 18 amendments did not include approval of, among other things, the methodology for calculating net emissions increases, resulting in such methodology not being incorporated into New Jersey's nonattainment NSR SIP. 61 Fed. Reg. 38591.

53. Where EPA has not approved specific portions of Subchapter 18 into New

Jersey's non-attainment NSR SIP (e.g., the methodology for calculating net emissions increases), the federal requirements related to such non-approved portions remain in effect under the authority of the Act. See 61 Fed. Reg. at 38592; 59 Fed. Reg. at 56026-27; 40 C.F.R. § 51.165.

54. 40 C.F.R. § 51.165(a)(1)(vi) defines a "net emissions increase" as the amount by which the sum of the following exceeds zero:

a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

55. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "actual emissions" as the rate of emissions of an air contaminant from a source operation, equipment, or control apparatus. The actual rate of emissions, as of a particular date, must equal the average rate at which the air contaminant was actually emitted during the two calendar years that are immediately preceding the particular date provided these are representative of normal source operations. Actual emissions must be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the selected time period. N.J.A.C 7:27-18.1.

56. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "allowable emissions" as the rate at which an air contaminant may be emitted into the outdoor atmosphere. This rate must be based on the maximum rated capacity of the equipment, unless the equipment is subject to

federally enforceable limits which restrict the operating rate, hours of operation, or both. N.J.A.C 7:27-18.1.

57. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "creditable emission reduction" as a decrease in actual emissions which meets the following conditions:

a) the decrease is quantifiable;

b) the decrease is federally enforceable;

c) the decrease is not required pursuant to any federal or state law, rule, permit, order, or other legal document;

d) the decrease is not relied on by the New Jersey Department of Environmental Protection (NJDEP) in the SIP or any revision thereto, adopted by the NJDEP, to demonstrate attainment or maintenance of a NAAQS or to demonstrate reasonable further progress toward attainment of a NAAQS; and

e) the decrease is verifiable, to the satisfaction of the NJDEP, to have in fact occurred.

A decrease is a creditable emissions reduction only to the extent that the pre-decrease level of actual emissions or the pre-decrease level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions. N.J.A.C 7:27-18.1.

58. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "emission offset" as a creditable emission reduction approved by NJDEP for use to offset an increase in allowable emissions of an air contaminant from a facility. N.J.A.C 7:27-18.1.

59. Subchapter 18, approved into the SIP at the time the alleged violations began to

occur, defines "minimum offset ratio" as the minimum acceptable ratio of emission offsets to increases in the allowable emissions for a facility. N.J.A.C 7:27-18.1.

60. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "modify" or "modification" as any physical change in, or change in the method of operation of, existing equipment or control apparatus that increases the amount of any air contaminant emitted by that equipment or control apparatus, or that results in the emission of any air contaminant not previously emitted. This term does not include normal repair and maintenance. N.J.A.C 7:27-18.1.

61. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "lowest achievable emission rate" or "LAER" as a limitation on the rate of emission from any source operation, equipment, or control apparatus which is consistent with the most stringent of the following:

a) the most stringent emission limitation which is contained in the SIP of any state for such class or category of source operation, equipment, or control apparatus, unless the owner or operator of the proposed new or altered equipment or control apparatus demonstrates to the satisfaction of the NJDEP that such a limitation is not achievable by that equipment or control apparatus;

b) the most stringent emission limitation which is achieved in practice by such class or category of source operation, equipment, or control apparatus; or

c) the most stringent emission limitation established in any NSPS or NESHAP applicable to such class or category of equipment or control apparatus.

N.J.A.C. 7:27-18.1.

62. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "nonattainment area" as any area of the state identified by the NJDEP as one in which the ambient air concentration of a criteria pollutant exceeds an ambient air quality standard, or designated by the EPA at 40 C.F.R. § 81.331 as an area in which the ambient air concentration of a criteria pollutant exceeds the applicable NAAQS. N.J.A.C 7:27-18.1.

63. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, defines "potential to emit" the same as that term is defined at 40 C.F.R. § 70.2. N.J.A.C 7:27-18.1.

64. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, applies to, among other things, facilities located in an ozone nonattainment area, having a potential to emit NO_x in amounts of 25 tons per year or more, and for which any allowable emissions proposed in the permit application would result in a significant net emission increase of NO_x. N.J.A.C 7:27-18.2.

65. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that a net emission increase of 25 tons per year or more of NO_x is "significant" for purposes of Subchapter 18. N.J.A.C. 7:27-18.7(a)(2).

66. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that the NJDEP must not authorize the construction, reconstruction, or modification of any equipment or control apparatus which is subject to Subchapter 18, unless the owner/operator of the facility has

demonstrated that the facility will be in compliance with all of the applicable requirements of Subchapter 18 at the time of initiation of operation of the newly constructed, reconstructed, or modified equipment. N.J.A.C. 7:27-18.3(a).

67. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that any person subject to Subchapter 18 pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)(1), must demonstrate that air contaminant emissions from the equipment proposed to be constructed, reconstructed, or modified will be controlled to the degree which represents LAER. N.J.A.C. 7:27-18.3(b)(1).

68. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that any person subject to Subchapter 18 pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)(1), must certify, in accordance with N.J.A.C. 7:27-1.39, that all existing facilities in New Jersey, which are owned or operated by the person applying for the permit, or by any entity controlling, controlled by, or under common control with such person, are operating in compliance with the provisions of Title 7, Chapter 27 of the N.J.A.C., and with all applicable emission limitations and standards promulgated pursuant to the Act, or in conformance with an enforceable compliance schedule approved by the NJDEP. N.J.A.C. 7:27-18.3(b)(2).

69. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that any person subject to Subchapter 18 pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)(1), must secure emission offsets, in accordance with N.J.A.C. 7:27-18.5, for each air contaminant having a significant net emission

increase at the facility. N.J.A.C. 7:27-18.3(c)(1).

70. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that any applicant required to secure emission offsets pursuant to N.J.A.C. 7:27-18.3(c)(1) must submit to the NJDEP, as part of the application, an emission offset demonstration, as specified in N.J.A.C. 7:27-18.3(e).

71. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that emission offsets required pursuant to N.J.A.C. 7:27-18.3(c)(1) must be secured, and the permanent reduction of emissions represented by the emission offsets must have occurred, prior to the initiation of operation of any newly constructed, reconstructed, or modified equipment or control apparatus. N.J.A.C. 7:27-18.3(f).

72. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that any person subject to Subchapter 18 pursuant to N.J.A.C. 7:27-18.2(a) and 18.2(b)(1), must submit to the NJDEP an analysis of alternative sites within New Jersey, and of alternative sizes, production processes (including pollution prevention measures), and environmental control techniques, demonstrating that the benefits of the newly constructed, reconstructed, or modified equipment significantly outweigh the environmental and social costs imposed as a result of the location, construction, reconstruction or modification and operation of such equipment. N.J.A.C. 7:27-18.3(c)(2).

73. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that any person subject to Subchapter 18 pursuant to N.J.A.C.

7:27-18.2(a) and (b), who proposes to cause a significant net emission increase of an air contaminant listed in Table 3 of N.J.A.C. 7:27-18.7, not including VOC, must conduct an air quality impact analysis to determine whether the proposed net emission increase would result in an increase in the ambient concentration of the respective criteria pollutant, not including ozone, as specified in N.J.A.C. 7:27-18.4.

74. Subchapter 18, approved into the SIP at the time the alleged violations began to occur, provides that only a creditable emission reduction, as defined at N.J.A.C. 7:27-18.1, may be used to offset an emission increase, as specified in N.J.A.C. 7:27-18.5.

III. FINDINGS OF FACT

75. Respondent owns and/or operates the glass manufacturing facility located at 901 S. Wade Boulevard, Millville, New Jersey (the Facility).

76. The Facility is located in Cumberland County, an area which EPA designated as in attainment with the NAAQS for NO_2. 40 C.F.R. § 81.331.

77. The Facility is also located in an area that EPA classified as Severe nonattainment with the 1-hour ozone NAAQS in effect at the time the violations alleged in this NOV began to occur. 40 C.F.R. § 81.331.

78. The Facility is also located in the OTR established by operation of law under Section 184 of the Act.

79. On June 7, 1993, the NJDEP approved Air Pollution Permit ID No. 75041-001, for the operation of glass melting furnace US1, which indicates that furnace US1 had a potential to emit 248 tons of NO_x per year, based on 8,760 hours of operation per year and a maximum pull rate of 145 metric tons of glass per any 24 hour period.

80. On September 20, 1996, the NJDEP approved preconstruction permit PCP960018, for the operation of glass melting furnace US2, which indicates that furnace US2 had a potential to emit 99.37 tons of NO_x per year, based on 8,760 hours of operation per year and a maximum pull rate of 90 metric tons of glass per day.

81. An "Emission Summary Sheet" prepared by NJDEP Air Compliance and Enforcement staff, dated October 28, 1998, indicates that the Facility (including ancillary units such as a lehr) had a total potential to emit NO_x in amounts of 396.84 tons per year.

82. The documents referred to in Paragraphs #79-81, above, indicate that on or before the date which the violations alleged in this NOV began to occur, the Facility had a potential to emit NO_x in amounts equal to or greater than 250 tons per year.

83. On May 18, 1999, the NJDEP received an application from Respondent, for a "Permit to Construct, Install, or Alter, and Certificate to Operate Control Apparatus or Equipment." This permit application was for the construction, installation, and operation of a new glass melting furnace, US3.

84. The permit application referred to in Paragraph #83, above, did not include the following:

a) documentation that any allowable emission increases will not cause or contribute to air pollution in violation of any NAAQS;

b) documentation that any allowable emission increase will not cause or contribute to air pollution in violation of any applicable maximum allowable increase over baseline concentration in any area;

c) an analysis of ambient air quality in the area to be affected by NO_x emissions from furnace US3;

d) a detailed description as to what system of continuous emission reduction is planned for the Facility, emission estimates, and other information necessary to determine that BACT would be applied;

e) an analysis of additional impacts to visibility, soils or vegetation resulting from emissions of furnace US3, and the air quality impact projected as a result of general commercial, residential, industrial and other growth associated with construction and/or installation of furnace US3;

f) a demonstration that air contaminant emissions from furnace US3 will be controlled to the degree which represents the LAER;

g) a certification that all Respondent's facilities located in New Jersey were being operated in compliance with all applicable state and federal emission limitations and standards;

h) an emission offset demonstration that specifies, among other things, the sources of NO_x emission reductions to be applied as emission offsets, how the emission reductions will be effected, how Respondent will make the emission offsets federally enforceable. how Respondent will ensure that the emission offsets will be in effect on or before the initiation of operation of furnace US3, and how the emission offsets to be secured will comply with N.J.A.C. 7:27-18.5: and

i) an analysis of alternative sites within New Jersey, and of alternative sizes, production processes (including pollution prevention measures), and environmental control techniques, demonstrating that the benefits of the newly constructed US3 furnace significantly outweigh the environmental and social costs imposed as a result of

the location, construction, reconstruction or modification and operation of such furnace.

85. On June 24, 1999, the NJDEP approved the permit application referred to in Paragraph #83, above, and issued a permit to construct and operate furnace US3. The permit, PCP990002, also became effective on this date.

86. NJDEP preconstruction permit PCP990002 indicates that furnace US3 has a potential to emit NO_x in amounts of 143.82 tons per year, based on 8,760 hours of operation per year and a maximum pull rate of 130 metric tons of glass per day.

87. In 2005, EPA began an investigation of Respondent to assess its compliance with the Act. The investigation included, among other things, a May 9, 2005 inspection of the Facility (EPA Inspection), a Section 114 request for information (114 Request), and a review of EPA and NJDEP files related to the Facility (EPA File Review).

88. During the EPA Inspection, the inspector was informed by Respondent's personnel that on or around December 1, 1998, Respondent began construction and/or installation of the new glass melting furnace, US3.

89. The EPA File Review indicated that on or around June 24, 1999, furnace US3 became operational, and began to emit pollutants into the ambient atmosphere, including NO_x.

90. On June 23, 2005, EPA sent a 114 Request to Respondent, which requested information regarding operations at the Facility.

91. On September 14, 2005, EPA received Respondent's response to the 114 Request.

92. The response to question #6 of the 114 Request indicates that, in 1996, actual NO_x emissions from the Facility's glass furnaces were:

a) US1: 186.66 tons;

b) US2: 47.43 tons.

93. The response to question #6 of the 114 Request indicates that, in 1997, actual NO_x emissions from the Facility's glass furnaces were:

a) US1: 184.62 tons;

b) US2: 57.91 tons.

94. The response to question #6 of the 114 Request indicates that, in 1998, actual NO_x emissions from the Facility's glass furnaces were:

a) US1: 186.15 tons;

b) US2: 66.05 tons.

95. The response to question #6 of the 114 Request indicates that, in 1999, actual NO_x emissions from the Facility's glass furnaces were:

a) US1: 159.63 tons;

b) US2: 24.61 tons.

96. The Response to question #15 of the 114 Request indicates that as part of the permit application referred to in Paragraph #83, above, Respondent calculated and claimed a decrease in net emissions of 78.64 tons of NO_x with respect to the construction, installation and operation of furnace US3, using the methodology in

Subchapter 18, N.J.A.C. 7:27-18.7.

97. The Response to question #15 of the 114 Request indicates that Respondent calculated and claimed emission reductions from furnaces US1 and US2, by subtracting the N.J.A.C. Subchapter 19 NO_x RACT value of 5.5 pounds per ton from an historical value of 12 pounds of NO_x per ton of glass produced.

98. The Response to question #15 of the 114 Request indicates that the historical value of 12 pounds of NO_x per ton of glass produced, used to calculate the decrease in net emissions referred to in Paragraph #96, above, was extrapolated using information relating to other facilities, not from data relating to actual or allowable emissions from furnaces US1 and US2.

99. A January 31, 1996 letter found during the EPA File Review, from NJDEP to Respondent, states that, "effective May 31, 1995, the emission rate of . . . NO_x from furnace US1 . . . [and] US2 shall not exceed 5.5 pounds of NO_x per ton of glass pulled." This letter also states that the 5.5 pounds per ton NO_x limit is the NO_x RACT, and that compliance with such limit will satisfy the requirements of N.J.A.C. 7:27-19.1 et seq.

100. The documents referred to in Paragraphs #79-99, above, indicate that the construction, installation and subsequent operation of furnace US3 resulted in a net emission increase of NO_x at the Facility in amounts equal to or greater than 40 tons per year.

101. The EPA File Review indicates that prior to beginning operation of furnace US3, Respondent failed to secure any emission offsets with respect to its emissions of NO_x.

102. The EPA File Review indicates that, to date, Respondent has been operating furnace US3 without installing any pollution controls, such as BACT and/or LAER, which are designed to control emissions of NO_x.

V. CONCLUSIONS OF LAW

103. Respondent, a New Jersey corporation, is a "person" as defined by section 302(e) of the Act.

104. From the Findings of Fact set forth above, EPA finds that at all times relevant to this NOV, Respondent owned and/or operated a "major stationary source" of NO_x, as defined in the PSD regulations, and Subchapter 18 as approved into the SIP at the time the alleged violations began to occur.

105. From the Findings of Fact set forth above, EPA finds that Respondent failed to properly calculate the net emission increase resulting from construction, installation and operation of furnace US3.

106. From the Findings of Fact set forth above, EPA finds that Respondent's construction, installation and operation of furnace US3 resulted in a "significant net emission increase" of NO_x at the Facility, as defined in the PSD regulations, and Subchapter 18 as approved into the SIP at the time the alleged violations began to occur.

Violations of Prevention of Significant Deterioration Requirements

107. From the Findings of Fact set forth above, EPA finds that Respondent's failure to obtain, in accordance with the PSD regulations, a PSD permit to construct and operate furnace US3 in an area designated "attainment" for NO_2, is a violation of 40 C.F.R. § 52.21 and Section 165(a)(1) of the Act.

108. From the Findings of Fact set forth above, EPA finds that Respondent's failure to undergo a control technology review, with respect to emissions of NO_x from the Facility, is a violation of 40 C.F.R. § 52.21(j) and Section 165(a)(2) and (4) of the Act.

109. From the Findings of Fact set forth above, EPA finds that Respondent's failure to install and operate BACT, with respect to emissions of NO_x from furnace US3, is a violation of 40 C.F.R. § 52.21(j) and Section 165(a)(4) of the Act.

110. From the Findings of Fact set forth above, EPA finds that Respondent's failure to conduct a source impact analyses is a violation of 40 C.F.R. § 52.21(k) and Section 165(a)(2) and (3) of the Act.

111. From the Findings of Fact set forth above, EPA finds that Respondent's failure to conduct an ambient air quality analysis is a violation of 40 C.F.R. § 52.21(m) and Sections 165(a) and (e) of the Act.

112. From the Findings of Fact set forth above, EPA finds that Respondent's failure to submit all information necessary to conduct appropriate analyses and to make determinations under 40 C.F.R. § 52.21 is a violation of 40 C.F.R. § 52.21(n) and Sections 165(a) and (e) of the Act.

113. From the Findings of Fact set forth above, EPA finds that Respondent's failure to provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the construction, installation and operation of furnace US3, and the air quality impact projected as a result of general commercial, residential, industrial and other growth associated with the construction, installation and operation of furnace US3, is a violation of 40 C.F.R. § 52.21(o) and Sections 165(a) and (e) of the Act.

Violations of Nonattainment NSR Requirements

114. From the Findings of Fact set forth above, EPA finds that Respondent's failure to obtain, in accordance with Subchapter 18 approved into the SIP at the time the alleged violations began to occur, a non-attainment NSR permit to construct and operate furnace US3 in an area designated "nonattainment" for ozone, is a violation of N.J.A.C. 7:27-18.1 et seq., enforceable under Section 113 of the Act.

115. From the Findings of Fact set forth above, EPA finds that Respondent's failure to demonstrate that air contaminant emissions from furnace US3 will be controlled to the degree which represents the LAER, is a violation of N.J.A.C. 7:27-18.3(b)(1), enforceable under Section 113 of the Act.

116. From the Findings of Fact set forth above, EPA finds that Respondent's failure to certify, as part of its permit application and in accordance with N.J.A.C. 7:27-1.39, that all existing facilities in New Jersey which are owned or operated by Respondent, or its parent or subsidiary companies, are operating in compliance

with all applicable state and federal emission limitations or standards, is a violation of N.J.A.C. 7:27-18.3(b)(2), enforceable under Section 113 of the Act.

117. From the Findings of Fact set forth above, EPA finds that Respondent's failure to secure emission offsets, in accordance with N.J.A.C. 7:27-18.5, for each air contaminant having a significant net emission increase at the facility, is a violation of N.J.A.C. 7:27-18.3(c)(1), 18.3(f), and 18.5, enforceable under Section 113 of the Act.

118. From the Findings of Fact set forth above, EPA finds that Respondent's failure to submit to the NJDEP, as part of its permit application, an emission offset demonstration, is a violation of N.J.A.C. 7:27-18.3(e), enforceable under Section 113 of the Act.

119. From the Findings of Fact set forth above, EPA finds that Respondent's failure to submit to the NJDEP, as part of its permit application, an analysis of alternative sites within New Jersey, and alternative sizes, production processes, and environmental control techniques, demonstrating that the benefits of the newly constructed US3 furnace significantly outweigh the environmental and social costs imposed as a result of the location, construction and operation of such furnace, is a violation of N.J.A.C. 7:27-18.3(c)(2), enforceable under Section 113 of the Act.

120. From the Findings of Fact set forth above, EPA finds that Respondent's failure to conduct an air quality impact analysis is a violation of N.J.A.C. 7:27-18.4, enforceable under Section 113 of the Act.

VI. ENFORCEMENT

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation(s) of the Act:

- issue an administrative penalty order, for penalties up to $25,000 per day pursuant to Section 113(d) of the Act and adjust the maximum penalty provided by the Act up to $27,500 per day for each violation that occurs from January 30, 1997 through March 14, 2004, and $32,500 per day for each violation that occurs on or after March 15, 2004, in accordance with the Debt Collection Improvement Act, 31 U.S.C. 3701 et seq. (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to DCIA; and

- bring a civil action pursuant to Section 113(b) of the Act for injunctive relief and/or civil penalties and adjust these penalties for inflation in accordance with the DCIA and 40 C.F.R. Part 19.

Furthermore, for any person who knowingly violates any requirement or prohibition of the SIP for more than thirty (30) days after the date of the issuance of a NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11,738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that if a penalty is assessed pursuant to Sections 113 or 304(a) of the Act, the Administrator or the court, as appropriate, shall,

in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

OPPORTUNITY FOR CONFERENCE

Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent to present evidence bearing on the findings of violation, on the nature of the violation, and on any efforts Respondent may have taken or may propose to take to achieve compliance. Respondent may arrange to be represented by legal counsel.

Respondent's request for a conference must be confirmed in writing within

ten (10) calendar days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made to:

Erick R. Ihlenburg
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3250

Notwithstanding the effective date of this FOV and opportunity for a conference discussed above, Respondent must comply with all applicable requirements of the Act.

Issued: March 30, 2007

Dore LaPosta, Director
Division of Enforcement & Compliance Assistance
U.S. Environmental Protection Agency - Region 2

To: Glen Halter, Plant Manager
Durand Glass Manufacturing Company, Inc.
901 South Wade Boulevard, Box 5012
Millville, New Jersey 08332

cc: Edward Choromanski
New Jersey Department of Environmental Protection

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **APR 2, 2007, I** MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBER P-7000-1670-0012-2336-3643** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):695

Mr. Glen Halter, Plant Manager
Durand Glass Manufacturing Company, Inc.
901 South Wade Boulevard, Box 5012
Millville, New Jersey 08332

Geraldo Villaran

Geraldo Villaran